

THE
LAW of ENGLAND:
Or, A True
GUIDE
For all Persons concerned
IN
Ecclesiastical Courts.

- I. As to Persons not frequenting their Parish-Church, &c.
- II. As relating to Premunire, &c.
- III. As relating to the Oaths of Supremacy and Allegiance, &c.
- IV. To the Case of Tythes, and duty of Church-Wardens, &c.

By H. Cary.

L O N D O N
Printed for the Author,



90-0690-0690-90

THE CONTENTS.

Chap. 1.

SHewing what is to be done by persons cited into Ecclesiastical Courts.

Chap. 2.

Of Citations.

Chap. 3.

Of those that are cited into the Courts of foreign Diocesses.

Chap. 4.

Of Labels, and what you must do if you cannot get copies of them.

Chap. 5.

Of Appeals, when, and to whom to be made.

Chap. 6.

Of Prohibitions and Consultations

The Contents.

Chap. 7.

*Of Premunires, with Presidents
thereof.*

Chap. 8.

*Of Excommunication, and the pro-
ceedings against persons excom-
municated.*

Chap. 9.

*Of the ways, means and causes to
overtkrow, frustrate or avoid the
Writ de Excommunicato Capi-
end. and the Imprisonment
thereupon.*

Chap. 10.

*Of the forfeitures for not yeilding
ones self on the Proclamation of
the Capias's, how the same are to
be levied, and in what cases nothing
forfeited.*

Chap. 11.

*Of the Writ de Excommunicato
deliberando & cautione adhiben-
da.*

Chap

The Contents.

Chap. 12.

*Of the effects of Excommunicati-
tion; with divers other observati-
ons worthy of remark.*

Chap. 13.

Of Ex Officio, and other Oaths.

Chap. 14.

Of Tythes and Church-Wardens.



1630. 1690. 1690.
1690. 1690. 1690.

*The Law of England;
or a true GUIDE.*

C H A P. I.

What is to be done by
Persons cited into Ec-
clesiastick Courts.

The King by (1) Late (1) Stat. 26
is the Supreme H. 8. c. 1.
Head of the English 37 H. 8 c.
Church, and he onely 17. 1 Eli.
originally hath all Spi- c. 1. 2 Eli.
ritual Authority & Ju- c. 1. See
risdiction: for all Arch- Cawdries
bishops, Bishoppes & Case, in s
other Ecclesiastical Cook Rep.
persons, have no manner Henfloys
case 9 Rep.
and the Can made
An. 1603.
Can. 3, 2.

of Power or Jurisdiction, but by, from, and under him. See this fully proved, asserted and acknowledged both by acts of Parliament, Judges Resolutions, and the very Cannons themselves, in the places quoted in the margin.

Wherefore when you are cited into any Spiritual Court, the best way is to appear, and demand of them by what, and whose authority they keep such a Court. Whether they have any Patent from the King for the same; if they say they have, ask

ask whether it be under his Great Seal or no, and desire they would shew it you; for upvides, ibi fides, certi-
tis beliebing: So in the old Law-book, called
Mirror of Justices, (as a great part whereof is
said to have been writ-
ten before the Con-
quest) you may see this
set down as an excepti-
on to the power of the
Judge, (2) Sir, I de-
mand the sight and hear-
ing of the Commission
whereby you claim Ju-
risdiction over me: and
afterwards in the same
section he saith, That
a Judges Commission

may be appealed from,
or excepted unto, for
that it gives not cogni-
zance of the cause for
which one is brought
into judgement, or for
that it is vicious in it
self, as being counter-
feit or not sealed with
the Kings Great Seal,
&c.

And three Causes or
Reasons there are
which oblige you to
enquire after these
things.

1. For your own safe-
ty, lest you should ig-
norantly contribute, and
become accessory un-
to the maintaining a
foreign or usurped
power,

power and so incur the grievous penalty of a Premonition, of which we must speak by and by. (3)

(4) Vide in
Chap. 7.

2dly, In point of Loyalty to the King; for if their proceedings are not by his Authority, they are undoubtedly against it.

3dly, Because you are thereunto obliged by the Oath of (4) Su-
premacy (if you have (4) Ap-
ever taken it) for there- pointed by
by you swear you do the Statute
utterly renounce all of 1 Eliz.
foreign Jurisdictions, cap. 1.
&c. and that you will
defend all Privileges
belonging or annexed
to

to the Imperial Crown
of this Realm of which
Ecclesiastical Jurisdi-
ction is one as appears
before. But how I
pray can you come to
know, That the pre-
sent Bishops Courts
are not foreign Ju-
risdictions ; and that
they do not still hold
them (as formerly
(s) they did) by virtue
of the Popes, or I
know not what other
like Authority from
the See of Rome which
by the said Oath of
Supremacy you have
so solemnly renoun-
ced) unless they pro-
duce something to you
so

(s) See
Stat 25 H.
2. cap. 1.

to manifest the contra-
ry: And how dare you
submit to their preten-
ded jurisdictions, or
own their proceed-
ings till you know
that the same are by his
Majesties Command,
Appointment and Au-
thority? And how shall
you know that, till they
make it appear to you
so to be? For (6) Ide non

(6) Cook.

apparitions, & non ex-
istentibus eadem est Ra-
tio, ~~those~~ things which
do not appear, are look-
ed upon in Law not to
be at all. and their
Lordships ipsi dixerunt;
or bare say-soes should
methinks be scarce su-
fit.

tisfactory in such ca-
ses.

Wherefore when they
have cited you before
them, and you have ap-
peared, if they will
not (upon your De-
mand) shew you by
what Authority they
do these things, and
who gave them that
Authority, you may
protest against all their
proceedings as contra-
ry to his Majesties
Laws and Privileges,
which you may
tell them you are
bound to assert and
maintain, and so leave
them, and go your ways
home; or else (if upon
con-

consulting Council
learned, and Proctors
in that behalf, you find
it feasible to be done) you
may put in some
formal Pleas against
their Authority and
Jurisdiction; and if they
will not allow it, move in the Kings
Bench or Common-
Pleas for a Prohibiti-
on, &c. and if they can
produce no Authority
from his Majesty, and
yet will proceed and
excommunicate you, it
is hold, you may either
indict them in a Pre-
munire, or bring an A-
ction upon the Case a-
gainst them, as Coun-
cel.

sel shall advise.

I told you before,
That it was your best
way to appear when
you are cited, and now
Ile tell you my reason
for it, which is this, Be-
sides the advantage
you may gain, and the
trouble and vexation
you put them to, by
quarrelling at there
Authority and Jurisdi-
ction, you will thereby
prevent them from ex-
communicating you for
a contempt in not ap-
pearing, which if you
do not appear, they will
be sure to do.

CHAP. II.

Of Citations.

A Citation is the Original Process, whereby a man is called into the Spiritual Court. It is served by a Sumner or Appartor, and (1) ought to be under the Hand, and Seal of the Chancellor, Commissary, ArchDeacon or other competent Judge of that Court from whence it issues.

By a Statute made 2 Edw. 6. cap. 1. it was enacted, That all Citations

(1) See Stat. 1 Ed. 6 cap. 2. & the Canons made An. 1640. Can. 17. both which though now out of force, may yet shew how Citations ought to be.

tions and Ecclesiastick
Process should be in
the Kings Name; but
this was speedily re-
pealed by 1 Mary cap. 2.
and though that act of
Repeal was also re-
pealed by 4 Jacob. cap.
25. yet the aforesaid
Stat. of Edw. 6. being
not in the said last Act
of Repeal expressly re-
vived, is thought not
to be now in force; so
that a citation in the
Bishops own Name,
may at this day be good
in Law; though I con-
fess I see not a dram of
Reason why the Spi-
ritual Courts should
not make their Pro-
cess

cess in the Kings name,
as well as the temporal
Courts, since those as
well as these are the
Kings, and must if they
have any Authority at
all, derive it from him ;
and methinks their
contrary practise smels
strongly of the old Ec-
clesiastick insolency ,
which alwayes endea-
voured to prefer the u-
surpation of the Miter
before the Jurisdiction
of the Crown.

There was a scurvy
custome formerly, to
grant general Citati-
ons to Apparitors to
cite all those whose
Names they should there-

therewith receive; and so the Proctors put in whose names they pleased: But this is altered by a (2) Cannon purposely made against it, whereby it is ordered, That no such general Processes shall be sent out, except the names of those that are to be cited, be first expressly entered by the hand of the Register under the said Processes, and subscribed unto by the Judge or his Deputy, and his Seal thereto affixed.

Fitzherbert in his Natura Brevium, (3) saith, That general Citations

(1) Vide Book of Cannons made An. 1603. Can 120.

(2) Fol. 99. of the Eng. Of the French, f. 41.

ons whereby men are cited to appear pro salutē Animæ , (for their souls health) without expressing any particular cause, are against Law, and that the party so cited may sue a Prohibition thereupon to the Bishop or other Judge from whom it issues.

Note, That if a Sumner or Apparitor return a man cited into any Spiritual Court, when in truth he was never cited, and thereby the man comes to be excommunicated for a supposed contempt in not appearing, an Action

on of the case lies against the Sumner or Apparitor for such his false return; for here is Damnum & injuria, and though the Oath and proceeding be ecclesiastical, yet the damages are temporal. Mich. 12. Jac. Cook. 12. Part. 128.

If an Apparitor will falsely and maliciously cite a man of his own head for a pretended Crime, whereas in truth there was never any such crime so committed, nor any common fame or colour of suspicion against the party to induce him so to do, the party having put-

purged himself of the objected crime in the Spiritual Court, may bring an action of the case against the Apparitor for such vexatious Citation, Hill. 7. Carlii, B. R. Rot. 1147. Carlion and Hills Case, Cro. 1. Part. 112. See Pasch. 10 Jac. Rot. 628. B. R. Powell and Godfrys Case, Cro. 2. Part 251. And Weald and Pease Case, Ibidem 355. acc.

CHAP. III.

Of those that are cited
out of the Diocese
wherein they inhabit,
into the Courts of For-
raign Diocesses

This Stat.
was repea-
led by Qu.
M. but re-
vived by 1
Eliz. and
is still in
force.

By the Statute of H. 8. cap. 9 it is enacted, That no person shall be cited to appear before any spiritual Judge out of the Diocese or peculiar Jurisdiction where he is inhabiting and dwelling at the time of the awarding the citation, unless in these cases following.

i. For an offence
that is committed in
that Foreign Diocese
where he shall be so ci-
ted,

ii. In cases of Ap-
peals, or where the Bi-
shop or Judge of the
peculiar Diocese is a
party.

iii. In cases where
the Arch-bishops cite
men concerning Pro-
bates of Testaments.

4thly. & lastly, In
cases where the inferior
Diocesan doth re-
quest, or give leave to
the Arch-bishops to cite
men before them, and
that only where such
request or license is al-

lowed by the Civil or
Cannons Law (which
whether it be at all or
no, is a question,) and

In any of these four
cases, one may be cited
out of the Diocese; but
in any other cases, the
Arch-bishop, Bishop,
Commissary, Official
or Substitute, that
causes any man to be
cited out of the Diocese
or peculiar Jurisdiction
where he inhabits,
shall forfeit to him dou-
ble damages and costs,
which he may recover
by Action of Debt, or
on the Case in any of
the Kings Courts, and
also shall forfeit for the
sum of £ 1000.

ty person so cited, to l.
one half to the King, &
the other to him that
will sue for it.

And on this statute
you may have a Prohi-
bition, as was resol-
ved in Jones and James
case, in C. B. Trin. 15.
Jac. Hob. 185.

And indeed this sta-
tute is only an affir-
mation of the ancient
Common Law; for it
was so long before, as
appears evidently by
8 H. 6. & 2 H. 4. Where-
tis said, that if one be
excommunicated in a
Foreign Diocese, the
same is Coram non Judi-
ce, and so by necessary

consequence void. Tri.
10. Jac. in C. B. Frances
and Powels case, God-
bolt 191.

So the Convocation
have made a (1) Can-
non, That no Dean of
the Arches, nor Offici-
al of the Arch-bishops
Consistory, nor any
Judge of the Audience
shall cite, or procure a-
ny to be cited that in-
habit out of the Arch-
bishops particular Dio-
cess, or peculiar, with-
out license first obtain-
ed of the inferior Dio-
cesan, according to the
said recited Statute of
23 H. 8. on pain of be-
ing suspended from their

(1) See
Canons
made An.
150. Can.
493.

their office three whole months.

Note here Reader,
That the Arch-bishop
of Canterbury hath a
peculiar Jurisdiction in
thirteen Parishes in
London, which they are
by name, I cannot tell,
only that called S. Ma-
ry of Bow is one, as
appears by Minshew,
whose words in the Di-
ctionary (Titu. Arches)
are these; The Judge
of the Arches is called
Dean of the Arches, be-
cause with that Offici-
alty there is joyned a
peculiar Jurisdiction
of thirteen Parishes in
London / which are ter-

Minshew:
Vide also
*Cowper's In-
terpreter.*

med a Deany, being
exempted from the au-
thority of the Bishop
of London, and belong-
ing to the Arch-bishop
of Canterbury) of which
the Parish of Bow is
one, and the chief, be-
cause the Court is there
kept : so that those that
live in any of these Pa-
rishes, must be cited in-
to the Court of the Ar-
ches only, and not to
the Bishop of Londons
Courts, nor to any of
the Archbishops other
courts for the words of
the before-recited Sta-
tute are, That they
shall not cite any man
out of the Diocess or
pecu-

peculiar Jurisdiction
 [Mark] wherein he
Dwellis or inhabitis
Residing so Inde

CHAP. IV.

What you are to do
Of Libels, and what you
must do if you cannot
get Copies of them.

After the citation and appearance, the next thing is the Libel, which is the same that in the common Law is called the Declaration, being the accusation or charge against the party, containing the cause of his being cited.

*Coules Inter-
preter,
and Min-
shew's Dict.
Tit. Lib. I.*

By the Statute of
2 H. 3. c. 15. it is enact-
ed, That a copy of the
Libel shall be delivered
presently to those that
are cited.

And if upon your
demand they will not
give it you accordingly,
you may have a Pro-
hibition till they give
it you, and besides, may
bring an action against
them upon this Sta-
tute, Fitz Herberts Na-
tura Brevium, f. 33.

And to that purpose
see in the Register of
Original Writs, f. 51.
The form of a Writ
called, Breve de copia
Libelli deliberanda.

CHAP.

CHAP. V.
Of Appeals, when, and
to whom to be made.

A Appeal is a <sup>Ridley's
View, p. 13.</sup> provocation to a higher Judge, that he may hear the cause anew, and redress that which is adjudged amiss in the inferior Court, or as others define it, (1) a removing <sup>(2) Cowell
and Mis-
sion.</sup> of a Cause from an inferior to a Superior Judge.

By the Statute of 24 H. 8. c. 17. it is enacted, That in suits begun before an Arch-Deacon or his Official,

the appeal shall be to
the Bishop of the Dio-
cess.

And in suits begun
before the Bishop or
his Commissary, you
must appeale within
fifteen dayes after sen-
tence given to the Arch-
Bishop of the Pro-
vince; Ibidem.

And in suits begun
before the Arch-deacon
of any Bishop, or his
Commissary, you must
appeal within fifteen
dayes after sentence
given, to the Court of
Arches, or audience of
the same Arch-bishop,
or Bishop; and from
the said court of Arches

or audience , within fifteen days after sentence there given , to the Arch-bishop of the Province . Ibidem .

And by 25 H . 8 . c . 19 . it is further enacted , That for lack of justice in the Arch-bishops courts , it shall be law- ful to appeal to the King in Chancery ; whereupon a Commis- sion shall be directed to certain persons defint- tively to determine the matter ; & from thence no appeal lies .

Stat . 22 H .
c 7 .

See Dyer f :
209 the
Presidents
of Magda-
len Col-
ledge cases

In a suit for sub- traction of tyths or of- ferings , if the defen- dant do appeal , the Ec- clesiastical

cal Judge shall forthwith adjudge him that so appeals, to pay the costs of suit therein before expended by the other party, taking security of him to repay the said costs, if the cause upon the appeal be given for him that appeals.

A man is sued or cited ex officio, in the spiritual court, and excommunicated, & upon a certificate into Chancery, a Writ de Excommunication to Capiendo is made out to take him: now if after all this, the Official by his Letters certifie into Chancery that

hat the party hath appealed from that sentence, he shall have a writ of Supersedeas, commanding the Sheriff not to take him while the appeal is depending, and if he have taken him already, then to deliver him, &c. Fitz Herbert Natura Brevium English, fol. 156.

Oz upon an appeal one may have a Scire facias to the Bishop, and party at whose suit he is excommunicated, to shew cause in Chancery why they should not cease to take him if they have not taken him already, or why they should.

should not deliver him to
if he be taken, whilst the
said appeal is depending; and if there
be no good cause shew-
ed, the same will be ob-
jected accordingly. Ibidem fol. 157, 158.

CHAP. V.

Of Prohibitions and
Consultations.

See Min-
shews Di-
ctionary,
and Cowels
Interpreter
and Terms
of the Law.
Ibidem.

A Prohibition is a
Writ which is
directed to the Spirit-
ual Court, or the par-
ty suing there, and his
counsel, or to all of
them, forbidding them
to

to proceed any further
in a cause there depend-
ing ; and it is most
commonly obtained by
suggesting that the said
cause doth not apper-
tain to the Spiritual
Jurisdiction.

A Consultation is ^{Ibidem.}
held that lies where
the spiritual court is
so stopped by a Prohi-
bition, and the Sug-
gestion wheteon the
same Prohibition was
granted, is found not
to be true, then a Con-
sultation goes forth,
giving the Spiritual
court leave to go on a-
gain as if the Prohibi-
tion had never been.

Prohibitions are of
two sorts of Law, and
of fact: Vide Ridley,
View of the Civil and
Ecclesiastical Law, page
169.

1. Prohibitions of
Law are those which
are expressed by any
statute, as by Edw. 6.
c. 12. all Ecclesiastic
Judges are forbid to
hold plea of any thing
that is contrary to the
Statutes of Westmin-
ster the second cap. 3 Ar-
ticuli Clerici, Circumspe-
cte Agatis, Silva Cedua,
the Treatise de Regia
Prohibitione, and the
Statute of Edw. 3. cap.
110.

As if a man be sued
in the Spiritual Court
for a chattel or debt, or
lands or tenements, or
for a trespass, then he
shall have this Prohi-
bition, Fitz Herbert Nat.
Brc. f. 97, 98.

2. Prohibitions of
fact have no express
word or letter of Law
or Statute for them, as
the other have, but are
raised by arguments,
and a kind of Equity,
where the Ecclesiastick
Judge will not admit
some matter, which at
common Law ought to
be allowed, or doth
something against the
parties right, or a-
gainst

gainst the Common
Law.

As this action was presented in the Ecclesiastick court for breaking on a holy-day, viz carrying wry on St John Baptists day in the time of Divine Service; the man prayed a Prohibition to stay the suit, suggesting that this was a holy-day by Act of Parliament, therefore it belonged to the Temporal court to examine whether it were broken on no, and a Prohibition was granted accordingly: Wheelers Case, 1 Jac in C. B.

So a man brought
in the Spiritual court
for incontinency, and
the Judges there
would have examined
him on his Oath, whether
he did it not; a
prohibition was a-
warded to stop them;
for (1) *Nemo tenetur se ipsum proderat vel accusare.* No man is bound
to betray or accuse him-
self, Cullier and Culliers
Case, the first part of
Crooks Reports.

(1) *Cook*
i. Part In-
stit. Vide
Hob. 84.
Spendow.

It seems these Pro-
hibitions may be had
out of any of the courts
as Westminster; but
where there is a suit in
the Kings Bench, or
Com-

Common Pleas, and you are sued for the same things also in the Spiritual Court, you must move for a Prohibition in that Temporal Court where the suit is depending, Fitz Herbert Nat. Bre. t. 106. And note, that in the Kings Bench, by the course of the Court, a Prohibition shall never be granted the last day of the Term, nor ought any motion to be then made for one; but on a motion made that day, the Court will make a Rule for laying proceedings till the next Term, by the Justices.

Pasc.

Pasc. 1 Car. R. R. I. at. 7.

If the Spiritual Judge refuse to receive and admit a Prohibition, you may have an Attachment against him, Fitz Herbert Nat. Brev. fol. 98.

And if they cite or excommunicate you for bringing a Prohibition, you may thereupon have a new Prohibition and an Attachment, and tis not in that case material whether the first Prohibition were sued legally or erroneously, because no man shall be punished for suing a Prohibition in the Kings Court, ibidem

dem, fol. 101. & 103.

~~See where one recovered 10000l. damages against a Bishop for excommunicating him after a prohibition delivered, 20 Edw. Rott. 46. in the Treasury Tres. Case, 32 Ed. 3. Rott. 78. Sir Tho. Seaton's Case. See also 37 Edw. Forty Pounds were recovered against the Bishop of Canterbury, because he excommunicated one for executing the King's Ward for removing a force. Cook 10. Part 420.~~

~~By the statute of 50 Edw. 2. cap. 4. if one sue forth a prohibition and~~

and his suggestion being overruled, a Consultation is obtained, he shall not affording unto another Prohibition, unless the matter of the bill be changed or removed. See *Fitz-Herbert's Natural Bravium*, fol. 10.

But if the Consultation be unwillingly or unduly obtained, a new Prohibition lies; *Trin. II. Iac. in Com. B.* See also *Stransam* and *Metcalfey's Case*, &c. Eliz. and *Sibley and Galwity's case*, the first part of *Crooks Reports*. By the Statute of 2^d and 3^d of Edward c. 15. it

it is enacted, That in
suits in the Spiritual
courts for Tythes, be-
fore the Defendant shall
have a Prohibition, he
must deliver to one
of the Judges of the
Court where he moves
for the same, a true Co-
py of the Libel, and the
suggestion, wherein he
prays the Prohibition
subscribed; and if he do
not prove that sugge-
stion to be true by
two Witnesses, within
six Months, a Consulta-
tion shall be granted
and the party suing
forth the Prohibition
shall pay double costs
and damages to the
plain-

Plaintiff in the spiritual Court for his trouble and delay thereby.

But note, This is only in suits for tythes, and it seems it is not usual in other cases to assess costs or damages upon the awarding a Consultation; for Doctor Ridley (2) complains of it, and says, the Temporal Judges forbear to do it, because they would not deter men from suing out, and pursuing Prohibitions.

One was presented ex officio, for not frequenting of his Parish church, the church of A;

C he

(2) In his view of the Civil and Ecclesiastical Laws.

he pleads that A. was
not his Parish Church,
but that he had used
to frequent another
Church; and because
the Spiritual Court
would not receive that
Plea, he moved in the
Kings Bench for a pro-
hibition; and it was
the opinion of the
whole Court, that the
Ecclesiastical Court
hath not power to in-
termeddle with the
precincts of any Parish
Churches, nor are they
to judge which shall be
said to be a mans parish
Church; wherefore a
prohibition was grant-
ed, Trin. 9. Jac. in B.R.

Bolst.

Bolst. i. Part. 159.

So in a suit in the Ecclesiastick Court for Tythes, in the Parish of A. the Defendant said they were in the Parish of B. and thereupon came and prayed a Prohibition in the Kings Bench, the question was, whether this issue, if in such a Parish or in such a parish, were tryable by the Law of the Land, or by the Law of the Church; and the court held, that the same is tryable by the Common Law: A Prohibition was awarded, Trin. 28. Eliz. Stransam and Collingtons

(46)

tons Case, Leonards 2.
Part.

CHAP. VII.

Of Premunires.

*Termes de
la Ley Com-
els Interp.
Minshew's
Diction.*

A Premunire is the name of a writ, and also of the offence it self, whereupon that writ is granted, which offence is this, where a man having or pretending cause of Suit against another, which might and ought to be decided in the Kings Courts at Common Law, doth not prosecute him there, but drawes

draws him ad alien. exa-
men, to some other kind
of tryal, whether it be
into the court of Rome,
or any Ecclesiastick
Court within the
Realln.

The principal Sta-
tutes (amongst divers
others) against this
offence, are the 27 Ed.
3. cap. 1. and 16 Rich. 2.
cap. 5. by which it is
enacted to this effect,
That if any man shall
sue another out of the
Realln for any thing
that appertains to the
Kings temporal courts,
or shall purchase or
pursue, or cause to be

purchased or pursued in
the Court of Rome, or
elsewhere, any Pro-
cesses, Excommunica-
tions, Instruments, or
other things whatsoever,
which touch the
King against him, his
Crown and Royalty, or
his Realm; and those
that bring, or receive
them into the Realm
or execute them, their
maintainers, abettors,
fauitors and counse-
lors, shall be put out of
the Kings protection,
and forfeit to him their
lands, tenements, goods
and chattels, and their
bodies to be imprisoned
during his pleasure.

A President of a Premu-
nire against the Bishop
of Norwich.

There was a custom
within the Town of
Thetford in Norfolk,
that all Ecclesiastical
Causes should be deter-
mined before the Dean,
who had there a pecu-
liar Jurisdiction; And
that if any man did
draw another into plea
befor: any other Eccle-
siastical Judge, and the
same were presented
before the Mayor, he
should forfeit 5 s. 8 d.
It happened, that B.
lued in the Bishops

Consistory, upon a Cause arising in that Town, which was presented before the Major, and so B. by the custom had forfeited 6 s. 8 d. Hereupon the Bishop cites the Major before him, and enjoys him on pain of Excommunication to annul the Presentment: The Major prefers a Bill of Indictment in Premunire against the Bishop, in which case it was resolved, that the word (Elsewhere) in the before recited Statute of 26 Rich. 2. extends as well to the Courts of Bishops, and other Ecclesiastick

clerastick courts with-
in the Realm, as with-
out; and that whether
the aforesaid custom in
Thetford, and the Pre-
sentment before the
Major were good or
not; yet this being a
temporal thing deter-
minable at Common
Law, and not examina-
ble in the Spiritual
Court, the Bishop had
incurred a Preemunire
by meddling with the
same, and accordingly
Judgment was given
against the Bishop that
he should be out of the
Kings protection, and
forfeit his lands goods
and chattels, and be

imprisoned during the
Kings pleasure, Hill.
25 H 8. the Bishop of
Norwich's case, bough-
ed in Cook 12. Part. 41.
in the case of a Premu-
nire.

Another President.

A sets forth his tythe,
and B a stranger comes
afterwards, and car-
ries them away; if the
Parson libel against B
for this in the Spirit-
ual Court, both he and
the Judge, and all that
have a hand in it, incur
a Premunire, for that
he ought to have been
sued for the same at
Common

Common Law, to which the tryal thereof did properly belong, 17 H. 8. Spilmans Reports, in Turbeviles Case, Hill. 16. Jac. in C: B. Brownlow.

Hereby we see, that the encroachment of the Spiritual Courts upon the Temporal Jurisdiction, was the only crime which anciently was punishable by a Premunire: but now the same punishment is by several Statutes extended to divers other offences.

As the maintaining the Authority of the See of Rome, and the re-

refusal to take the oath
of Supremacy, acts
both punishable by
Præsumire by the sta-
tute of 5 Eliz. c. 1.

So is the adding or
maintaining any that
sets forth the Authori-
ty of the See of Rome,
after the offence, by the
statute of 13 Eliz. c. 1.

Some there are, (as
Sir Thomas (1) Smith,
and after him, Doctor
(2) Cowel, and Sir Tho-
mas (3) Ridley) who
stoutly contend, That
at this day no Præmu-
nire can lye for suing
for any thing whatsoever
in the Ecclesiastick
Courts; for (say they)
all

(1) Dr.
Rep. Angl.
l. 2. c. 81.
(2) In his
Interpre-
ter.

(3) In his
view of
the Civil
and Can-
non Law.

all the Statutes of
Preremunire were made
when this realm groan-
ed under the Papal poise,
to restrain the usur-
pation and encroach-
ment of the See of
Rome : But now the
Pope, and all his pre-
tended Authority be-
ing banisht out of the
Land, and all Ecclesi-
astick Jurisdiction vest-
ed in the King, Cesante
Ratione, Cessat Lex ;
The cause of those
Lawes being gone, the
lawes themselves ought
to cease. And besides
the offence mentioned
in the Writ of Premu-
nire (4.) is, Contra Co-

(4) Old
Nat. B.c.
f. 151.

ronam

ronam & dignitatem Re-
gis, against the Crown
and Dignity of the
King, which (say these
men) the proceedings of
the now Spiritual
Courts cannot be, for
they are by the Kings
Authority, and what is
done by his Authority,
cannot possibly be said
to be against it.

But saith the Dis-
ciple of our Law, the
learned Lord Cook,
(5) Argumentum ab Au-
thoritate fortissimum est
in Lege, Book-cases
are the best proofs of
Law; and therefore to
silence these mens Rhe-
torical flourishes by
the

(5) On
Littleton,
page 141.

the irrepealable voice
both of Authority and
Reason; let them know
that it was resolved by
all the Justices, Term.

(6) Pasch. 4. Jac. in B.R.

**That the Statutes of
Premunire are still in
force, and not repealed,
nor obsolete; and that
when any Ecclesiastick
Judge doth usurp up-
on the temporal Law,
he doth offend against
the Crown and Digni-
ty of the King, for this
reason, because he
draws the cause which
is determinable at the
Common Law, to be
decided by the Ecclesi-
astick Law, and so de-
prives**

(6) See

Book 22.

Part 5.

32. Case of
Premunire.

pribes the Subject of

(7) See THE COMMON
Ed 6. l.36. Cook pref.
to 5th and 6. Reportis,
and on *Littlesop.*
L.2.12.
Sect. 313.

LAW, WHICH
IS THE (7) BIRTH-
RIGHT AND IN-
HERITANCE OF E-
VERY FREE-BORN
ENGLISH-MAN.

CHAP. VIII.
Of Excommunication,
and the proceedings a-
gainst persons Excom-
municated.

Excommunication is
an Anathematiza-
tion, cursing, or casting
one out of the Church,
or (as Panermitan de-
signes it) a sentence pro-
nounced.

nounced and inflicted by
the spiritual Judge, de-
priving one of the par-
ticipation of the Sacra-
ments, and sometimes
also of the communion
of the faithful. See
Minshew's Dictionary.

This sentence anciently was so terrible,
that it gave birth to
that Axiome, (1) Ex-
communicatio sine justa
sine iusta, est timenda ;
Excommunication, be-
it just or unjust, ought
to be feared. But af-
terwards, when men
began to give but small
regard to the Flashes
of this spiritual Light-
ning, the Clergy who
have

(1) Vide
Summa
Angelica
Titulo
Excom-
municatio,

have always had a great hand in molding our Laws) devised to make use of the thunder of the Secular Arm, and thereby render these their fulminations more formidable to the vulgar. Whereupon they introduced our cruel sanguinary Laws for casting the bodies of those men into Prisons, Earthly Purgatories, whose souls they had by Excommunication given to the Devil, a mark out for the bottomless pit; the manner of which proceedings are as follows.

After

After the Spiritual Judge hath pronounced a man excommunicated, he sends his Letters Denunciatory to the Parson or Vicar of the Parish where he is, or lately was inhabiting, commanding the said Parson or Vicar openly to denounce the sentence of Excommunication in the said Parish Church, on some Sunday or Holy-day in the time of Divine Service.

Then if the party stand so excommunicated forty days, the Bishop may certifie the same into the Chancery,

ty, whereupon a writ
 (properly called a writ
 de Excommunicato Ca-
 piendo, but commonly
 a Significavit) is made
 out thence into the
 County where the par-
 ty is, or lately was in-
 habiting, returnable in
 Term time, in the
 King's bench, command-
 ing the Sheriff to take
 his body, which if he
 do, he must carry him
 to the Gaol, there to
 remain till he submit
 to the Church, and will
 be absolved.

Stat. 5. E.
 liz. c. 13.

Ibidem.

But if the Sheriff
 return a Non est inven-
 tus (that is, that he can-
 not find him) then a
 writ

Writ (called a Capias) issues out of the King's Bench, which must be returnable two months at least after the test or date; and by virtue of this Writ the Sheriff (ten days at least before the return of it) must either at the County Court, Assizes or Sessions, make proclamation, that the party yield his body to prison, there to remain as aforesaid, within six days after such proclamation, on pain of forfeiting 10l.

After which proclamation, and the six days expired, the Sheriff returns

Ibidem.

turns the said Capias, and certifies whether the party hath yielded his body or not; if he have not, he forfeits ten pounds; and thereupon another Capias goes forth with a like Proclamation on pain of forfeiting twenty pounds, and so Capias after Capias infinitely, and the party (not yielding himself) forfeits twenty pounds on every Capias.

Ibidem.

But if the party be taken on the Writ de Excommunicato Capiendo, or yield himself on any of the Proclamations of the Capias's, he must

must remain in Prison
without Bail, Bafton,
(1) that is, leave to go
abroad with a keeper
or Mainprise, until he
submit, &c.

(1) Cowell,
Interpre-
ter.

CHAP. IX.

Of the ways, means, and
causes to overthrow,
frustrate or avoid the
Writ de Excommuni-
cato Capiendo, and the
Imprisonment there-
upon.

Note, the Bishop
only must certi-
fie Excommunication,
and the reason why no
other

other can do it, is because the King's Court can write to no other to absolve him , Cook 8. Pag. 68, 69. Trollops Case ; and his Certificate must recite that the party hath stood excommunicated forty days at least before the date thereof, or else no Writ de Excommunicato Capiendo can be made out, Fitz Herbert Nat. Brev. fol. 156.

And if this Certificate be false in that particular, I know not why you may not bring and maintain an Action of the Case against the bishop for the same,

By

By the Statute of 5
Eliz. cap. 23. Every Writ
de Excommunicato Ca-
piendo, must be opened
and delivered of Re-
cord in Court before
the Justices of the
Kings Bench, to the
Sheriff or his Deputy
who is to execute it.

And if the said Writ
be not so delivered of
Record, it is error, and
the party taken upon
it may bring himself up
by Habeas Corpus, and
he shall be discharged,
as was resolved and
done, Trib. 10. Car. in
B. R. Parkers Case, Cro.
1. Part. 421. See also
11 Jac. in B. R. Cro. 2.
Part 566. D ful-

Further, by the same
 Statute the said Writ
 de Excommunicacione
 piendo, is to be made
 out in Term time re-
 turnable next Term af-
 ter, and is to contain
 twenty days at least
 between its issue or date,
 and its return; And
 though we do not find
 any Presidents in this,
 as we do in the case be-
 fore, yet since 'tis a re-
 ceived Maxim, Simili-
 um similis est Ratio, that
 of like things there is
 like Law; then cer-
 tainly the omission of
 this will be error, as
 well as the not deliver-
 ing it of Record: for
 the

the Statute is no less express and affirmative in commanding the one, than the other.

But how shall you know whether this writ be so delivered of Record to the Sheriff, or whether the same do contain twenty days between its issue or return? You must search in the Crown Office for the same, and if the Clerks there shall refuse to tell you, (offering to pay them for the search) you may bring an Action, or move the Court against them, as you shall be advised for by Law and Reason

(which is Anima Legis,
the life, substance, and
quintessence of the
Law) all Records
ought to be free and o-
pen for all men to
search, and have re-
course unto.

CHAP. X.

Of the forfeitures for not
yielding ones self on
the Proclamation of
the Capias's, how the
same are to be levied,
and in what Cases no-
thing is forfeited.

I Told you in the last
Chapter, that if the
Sheriff

Sheriff return a Non Inventus on the Writ of Excommunicato Capiendo, a Capias shall go out, with a Proclamation for the party to yield himself, which if he do not, he forfeits 10 l. on every Capias afterwards, and this is by the before-mentioned statute of 5 Eliz. c. 23. But note, that by the same statute there are two cases in which though a man stands out never so many Proclamations yet he shall forfeit nothing, and they two are these.

First. Where the party against whom the

Writ de Excommunicato Capiendo is aboarded, hath not therein sufficient and lawful Addition, that is (saith Cowel) a Title over and above his Christian and Sir name, shewing his state, degree, occupation, trade or mystery; as, Lord Knight, Gentleman, Roman Clothier, and the like, and the Hamlet, Town, Parish and County where he is, or lately was conversant or dwelling.

Secondly, Where it is not expressed in the Bishops Certificate, That the cause for which

Which the party was originally cited into the Spiritual Court, was one of these ten causes following, (that is to say). Heretie, refusing to have Children baptised, refusing to receive the communion, refusing to come to Divine Service, error in Religion or Doctrine, Incontinency, Usury, Simony, Perjury in the Ecclesiastical Court, or Idolatry.

Then in both those cases, saith the aforesaid Statute, all and every the pains and forfeitures limited by this Statute against such

persons Excommunicate, by reason of such Writ de Excommunicatione Capiendo; wanting such addition, or of such Certificate, wanting all the causes aforesubtended, shall be utterly void in Law, and by way of plea to be allowed to the party grieved, which some expound, that the writ de Excommunicatione Capiendo, and the Certificate should in those cases be utterly void, and the party taken thereupon discharged; and indeed the words prima facie seem so favour such a construction.

But our Judges have adjudged the contrary, and resolved, that not the Writs, or the Imprisonment thereupon, but only the forfeitures for not coming in on the Proclamation, are by those words avoidable. Hugh, Case, 2. Part of Crook.

Now the course to make you pay these forfeitures, is this, when the Sheriff hath returned into the King's Bench; that you have not yielded your self, then the Judges there estreat the forfeitures into the Chancer, and thence a D-

stringas is made out against your Estate, which the Sheriff seizes and sells for the payment thereof.

Wherefore if your case happen to be either of the two cases aforesaid, so as by the statute you ought not to be made pay any of the said forfeitures, then you must (I conceive) when you hear the Sheriff hath such Distringas against you, before he hath seized on your goods, or at least before he hath sold them, render your self, and come in, and shew your case by way of plea in the

Kings

Kings bench, and there they will relieve you against the same.

This I suppose to be the course of proceedings in this particular; for otherwise I see not how a man shall have day in Court to shew his cause, unless we shall imagine that there must go out a Scire facias to shew cause before the Distrigas; I cannot indeed offer you any thing for Law confidently in this case, for I have not seen nor heard of any precedent thereof, and I looke not to vent my own thoughts or fancies for

for Law, lest I should
hereafter be forced ad-
cere non putaram, which
(as I learned out of
my honest Grammar)
insipient is etc: However
if that be not the way,
there is (you may build
on that) some other
course to avoid the said
forfeitures in those ca-
ses, though: as yet we
cannot positively tell
you what, or which the
same is; for in truth
there is scarce any sub-
ject in our Law more
dark, or less under-
stood than this concer-
ning Excommunicati-
ons, and its penalties:
partly, because most of
the

our Books speak of it,
 Aut nequicquam, aut ne-
 quaquam, either not at
 all, or nothing to the
 purpose; handling it
 as if it laboured with
 a Noli me tangere, or
 would prick their ten-
 der fingers: And parti-
 ly, because the same
 was in the late times
 utterly out of use, and
 so by consequence never
 well understood by our
 Junior Proctors, and
 almost quite forgotten
 by those of moze anci-
 ent standing.

CHAP.

CHAP. XI.

Of the Writs de Excom-
municatio Deliberando:
& Cautione adhibenda.

If after all this, the party excommunicated make satisfaction to the Church, the Bishop must certify the same unto Chancery, and thence shall issue out a Writ called, De Excommunicato Deliberando, commanding the Sheriff to deliver him out of prison, Fitz Her-berts Nat. Bre. Tit. Bre-ve de Excom. Capiend.

D

Or if the party being in prison, doth offer to give surety to obey the Church in form of right, and the Bishop refuse to take the same, a Writ called De cautione admittenda, may be had, commanding the Bishop to accept of such surety, and get the man discharged; and if the Bishop thereupon do not send to the Sheriff to discharge him accordingly, then the party shall have a Writ out of Chancery, directed to the Sheriff, commanding him to deliver him out of prison without any

any more ado: and upon this Writ, he may have an Alias, Pluries, and an Attachment against the Sheriff, but so he cannot against the Bishop.

Ibidem.
Titulo
Superse-
deas.

And 'tis said, "that these Writs may also be had (upon a petition to my Lord Chancelor) before the party is taken, in the nature of a Supersedeas commanding the Sheriff not to take him, or if he have taken him, to deliver him.

CHAP. XII.

Of the effects of Excommunication, with divers observations worthy of remark.

Note, that a person excommunicated cannot bring or maintain any action in his own right, but his thoughts as Executor or Administrator to another he may, for these he sues in the right of the party deceased. Tamquam quare, because some say, that they who converse with a person excommunicated, are excom-

excommunicated also
Cook 1. Part Institutes
134.

When Excommu-
nication is pleaded to
the Plaintiff, his Will
shall not abate; for if
afterwards he pur-
chase Letters of Abs-
olution, and shew them
to Court, he may have
Re-summons, or Re-at-
tachment upon his D-
eignat, according to
the nature of his Will,
Old Nat. Bre. f. 37. Coo.
1. Part Instit. 133. and
the entry is, Quod lo-
quela removeat quouf-
que, &c. Cook 8. Part
58, 69. Trollops Case.

If a man sue a Bishop, and he plead Excommunication by himself or his Commisary, (although it be for another cause than that in question) the same shall not disable the Plaintiff to go on with his suit, for the Bishop is a party, Ibidem.

Note, that a man excommunicated may have the surety of the peace granted to or against him, as another man, Crompt. 134. Dalton 164. So may a man attainted in a Prentre, Ibidem. But by the old Book, a man excommunicated ought not

not to serve of a Jury,
Cook Instit. i. Part. 158.
&c.

Note, that if excom-
munication be pleaded,
it must be under Seal
resolved, Hill. 44. Eliz.
in B.R. Sonham & Trun-
dles Case, Crook 3. Part
9:9. See Pasch 4. Car.
in B.R. Viner and Eatons
Case, Hetly 86. aec.

Note, If one Bishop
certifie Excommunge-
ment made by another
Bishop, the same is
void: so also if the Bi-
shop be dead before the
certificate be shewed, it
is void, and signifies
nothing, Old Nat. Br.
f. 36.

Note,

Note. That the Bishop's Certificate must recite not only the cause for which the party is excommunicated, but also that for which he was first cited into the Spiritual Court; that so the temporal Judges may know whether the matter did originally appertain to the spiritual Jurisdiction.

Note, If a man render his body on a Proclamation of any of the Capias's, and yet the Sheriff will return that he hath not, whereby the mans goods comes to be distrained for a supposed forfeiture

ture for not rendering
himself, whereas in
truth he hath done it,
the sheriff for such false
return, forfeits forty
pounds to the party
grieved, by Stat. 5 Eliz.
cap. 23.

Note, That they of
the Spiritual courts, of
themselves have not
power to meddle with
the person of any man,
nor to send process to
bring any mans body
before them, but ought
to certifie into Chancery,
and thence have a
writ, &c. nor can the
Sheriff or any other by
virtue of any Writ de
Excommunicato Capien-
do,

do, break open any
mans house, See Smith
and Smiths Case, Hill.
Eliz. in C. B. Croe.

Part 74.

Note, That it was
settled by the Justi-
ces, That if a man be
excommunicated by the
Ordinary, where he
ought not to be, and by
negligence doth not sue
Prohibition, but re-
maining excommunicated
forty days, and up-
on a Certificate into
Chancery he is taken
upon an Excommuni-
cado Capiendo, he may
have a writ command-
ing the Bishop to ab-
olve him; and also,
that

that when a man is excommunicated against the Law of the Realm so as he cannot have Cautione Admittenda for then he ought to obey the commands of the Church in forme of Law, (that is to say) the Ecclesiastick Law whereas the same is against the forme of the Law (that is to say) the Common Law: In this case, if he shew his case to the Bishop, and request him to absolve him, and he refuse, then action upon the case eth against the Bishop for such refusal, Mich. 8. Jac. Cook. 12. Part 7.

CHAP. XIII.

Of Ex Officio, and other
Oaths.

FOR a Corollary to this Discourse, I think it will not be amiss to add a word or two concerning Oaths; and first of the definition of an Oath in general.

An Oath saith Cook (the 3d part. Instit. c. 74. pag. 165.) is an affirmation or denial by any Christian, of anything lawful and honest before one or more that

C have

have Authority to give
the same for advancing
of truth and right, cal-
ling Almighty God to
witness that this Te-
stimony is true.

And further he saith,
no oath ought to be ad-
ministered but such as
is allowed by the Com-
mon Law, or by Act of
Parliament : neither
can any Oath be alter-
ed that is so allowed,
unless it be by Parlia-
ment : nor ought any
to administer any Oath
but such as are thereto
authorized by Act of
Parliament ; and there-
fore all Statutes that set
forth

forth any Oath, do also give some body power to administer the same.

Wherefore when you are at any time required to take any Oath, you must enquire two things : first, By what law such oaths as they require you to take, is prescribed and warranted. Secondly, Whether those that tender the same, have power to administer it.

And note, that all Ex Officio Oaths, or oaths to accuse your self of any crime, or to answer all such questions as shall be demanded of

you &c. are against
Law, and ought not to
be taken by any. So it
was resolved by the
Justices, that the Di-
cinary or Bishop can-
not constrain any to
swear to answer such
Articles and Interroga-
tories as shall be admi-
nistered unto him, but
they ought to deliver
the Articles to him up-
on which he is to be ex-
amined, so the intent
that he may know whe-
ther he ought to an-
swer unto them. Sec-
ondly, That no man
ought to be examined
upon secret thoughts

of his heart, but some-
thing must have been
done or spoken by him,
on which he is to be ex-
amined, and if they shall
go about to examine in
such cases ex officio, a
prohibition lies. See
Cook 12. part. 26. Bolst.
26. Trim. 10. Eliz. Leighs
Case there touched ;
and M. 19 Eliz. Dyer,
Hynds Case, who be-
cause he would not
swear before the Eccle-
siastical Commission on
Articles for Unity,
was committed by them
to the Fleet, but was
delivered upon a Ha-
beas Corpus per Curiam.

'Tis a Rule & Max-
im in Law, Nemo de-
bet seipsum prodere, Ne-
mo tenetur accusare seip-
sum, No man ought, or
is bound to betray or
accuse himself ; such
unnatural proceedings
were to make him a
kind of Felo de se, and
as it were, accessory to
his own ruine ; there-
fore at the Common
Law in tryal of Chal-
lenges, if the cause of
Challenge touch the
dishonor or discredit of
his Juroz, he shall not
be examined on his oath
concerning the same,
Cook. Institutes part. i.
158. b. 1. And

And so if the Ecclesiastical Court will enjoin a man to be examined on his Oath for Discovery of any coⁿvin, fraud, or other crime, a Prohibition lies, Hob. 84. Bendlow, Wingates Max. pa. 487.

And indeed the Petition of Right made Anno tertio Caroli primi, condemnes all such oaths and Inquisition-like proceedings, as not at all warrantable by the Laws and Statutes of the Realm, and expressly enacts, That no man hereafter shall be called to take such

C 4 oath,

Oath, or give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof.

The onely persons authorized to administer the Oath of Allegiance, are the Bishop in his own Diocess, two Justices of Peace, whereof one of the Quorum, within the limits of their Jurisdictions, and the Judges or Justices at the Assizes or Sessions, Stat. 3. Jac. cap. 4.

The Oath of Supremacy was never to be

be required of common persons, but onely of such as had some Office or place of trust: See Stat. 1. Eliz. cap. 1. and 5. Eliz. cap. 1. But now the said Oath is not required of any at all, it being suspended by a Proclamation of his now Majesty, soon after his Happy Restauration.

CHAP. XIV.

Of Tythes.

WE shall not spend time in disputing the old Question, whether Tythes be due Jure Divino, or Divine Right or no: For though formerly there have been many a quarrel about it, yet we perceive most Priests themselves do now begin to grow weary of that broken Reed, and fly from thence

thence to the stronger
refuge of humane con-
stitution , or positive
Law.

And here as to that
we may tell you, That
all exaction of Tythes
is against Magna Char-
ta, and the Fundamen-
tal Law of the Land ;
for we conceive it will
be no difficult matter
to make it appear be-
yond all doubt or deni-
al, that all the time of
the Confirmation of
Magna Charta, Ecclesi-
astical persons had no
legal remedy by force
to recover their tythes,
nor was there any set-
led

ied Parochial Right; but the People did arbitrarily bestow them, where, and to whom they pleased. See learned Seldens History of Tythes, p 291. 252. 144. 146. And who can produce a Cannon of any General Council before that of Lateran, held about Anno 1216. which either purposely commanded payment of Tythes, or expressly supposed them a duty of Common Right. See Seldens History, 137. and the Roll of Winton called Doomsday Book.

Since

Since therefore ex-
action of Tythes was
not practised at the
time of the constituti-
on of Magna Charta,
(which by an act made
25 Edw. I. is adjudged
and declared to be the
Common Law of the
Land) and for that it
is enacted by Magna
Charta, cap. 29. That no
man shall be disseised or
put out of his Free-tene-
ment, Liberties or Cu-
stoms, but by the lawful
Judgment of his Peers,
or Law of the Land :
Therefore Tythes (be-
ing a part of every
man's

mans Free Tenement
or Free-hold & Birth-
right) ought not to be
taken from him.

And if they shall talk
of statutes made since
for Tythes; the An-
swer is ready, that all
such Statutes being
against Magna Charta,
were destroyed before
they were born by the
Statute of 42 Edw. 3.
cap. 1. which enacts,
That if any Statutes
should from thence-
forth be made against
Magna Charta, the same
should be void; and be-
sides, such Statutes for
Tythes, being against
Com-

Common Right and Reason, and the Law of the Land, which is Re-
 &ta ratio, they are stipted
 as soon as ever they
 creep into the world;
 for so it was adjudged
 in Bonhams Case, 8. P.
 of Cooks Reports, That
 Acts against Common
 Right or Reason, are
 ipso facto, void; where-
 with agreeeth Doctor
 and Student, cap. 4. p. 8.
 where he saith, That
 the Law of Princes,
 the Commandments of
 Prelates, the Statutes
 of Commonwealths, no
 ne the Ordinances of
 the Church, are not

righteous nor obligatorie or binding, except they be consonant and agreeable to the Law of God; and cap. b. p. 4. Against the Law of Reason neither Prescription, Statute nor Custom may avail, for if any be brought in against it, they be void.

Or secondly. If they speak of custom for their Tythes, we could as easily answer them there to, in the words of ^{(1) Cyprian.} his Father, Custom without truth is but Erroris veritas, an old error; or with the Law

Law, Maxim, Malus us-
 sus est abolendus, Bad
 Customes must be abo-
 lished. &c., in the
 words of Cook, non diu-
 turnitas temporis, sed fo-
 liditas rationis consideran-
 da est, Not the length
 of time, but the strength
 of reason is to be con-
 sidered; but what rea-
 son pray is there in
 this irrational ridicu-
 lous Logick; Parochial
 Priests have befooled
 their Parishioners
 of the tenth part of
 their free tenement or
 Substance almost ever
 since the Council of
 Lateran; Ergo they must
 do

Do so still in saecula sae-
lorum, for evermore.

This, I say, and
much more to the same
tune (which would
make a noise, and drum
barely in popular ears
and empty heads, that
are to be let unfurnish-
ed) we could alledge,
but to as little purpose
as if we were reciting
some of Plato's Laws,
or telling you the fan-
cied Statutes of Uto-
pia ; for admit it were
anciently de Facto, and
be still de Jure Funda-
mentali, our right to be
free from Tythes, or at
least pa-

least to bestow them
how we please: yet al-
as! when shall we en-
joy this Right? We
may not do amiss to
hope and wish for it,
but I see small reason
we have to look for, or
expect it: Wherefore
leaving Idea's, let us
come to that which is
practicable and done e-
very day, and acquaint
you with something
concerning Tythes;
which you may confi-
dently challenge as
your right, and no bo-
dy deny it you: And
first, Of what things
Tythes are not to be
paid.

i, Ge.

1. Generally, Tythes
are not to be paid of
Houses, or of any
Rent reserved on any
demise of them, unless
there be some Statute
or Prescription for the
same, Cook 10. part, 16.
Dr. Graunt's Case. See
Dr. Layfields' Case,
where tis said, That
no tythes are paid for
houses in any Cities
or Towns in England,
sabe in London, where
by a Decree made 37 H.
8. cap. 12. each house is
to pay 2 s. 9 d. Tythe
for every pound Rent;
but that Decree was
never enrolled, nor had
any

any subsequent confirmation, and therefore is verily thought to be not at all in force or obligatorie.

2. For Personal Tythes, that is, for the profit made by Crafts, Labor and Trades, it is provided by a Statute of Edward 6. cap. 12. That all such as use trading or handicrafts (except common Labourers) shall pay their tythes as they were used to be paid forty years before that Statute, and as of right they ought to be paid:

paid: And for this, in most places, the Distishioners use about Easter to pay a small matter to the Parson or Vicar, according to the custom of the place; for without a custom for it, nothing ought to be paid for personal tythes, by three Justices in C. B. 17 Jac.

3. Quarries of stone, gravel, sand, clay, &c. are not tythable, Register 55. FitzHerbert Nat. Bre. 53. no more are not coals, 20 Eliz. by all the Justices; the reason is, because tythe is paid

paid otherwise of the Land of which these things are parcel; and 'tis a rule, tythes ought never to be paid of one thing twice.

4. Wills, Jure Com-
muni, ought not to pay
tythes: but if they be
of newe erection, they
must by the Statute
9 Edw. 2. c. 5.

5. Feræ Naturæ are
not tythable, 12 H. 8. 4.
by all the Justices:
Query therefore, whe-
ther tythes are to be
paid of Coneyg: It
seems no, unless it be
by

by a particular Custom,
15 Car. in B.R. by Berk-
ly Justice,

6. Of Trees of
twenty years growth
that are timber, no
tythe shall be paid, by
the Statute 45 Edw. 4.
c. 3. but of Willows, th-
Maples or such trees,
that are not timber,
though they be of a-
bove twenty years Hg-
rowth, tythes shall be
paid: and if they be
sold standing, the buy-
er, not the seller must
answer the tythe: but
if sold after it is cut
down, contra.

7. Tythe

7. Tythe shall not
be paid for sowings,
or after pasture, 6. Jac.
in C. B. Moys of the
Beast of the plough or
pail, or belonging to
husbandry, but if a
man keep cattle till
they be ready for the
pail, and then sell them,
he must pay tythe, Mic.

8. Car. B. R. Baxter and
Hopes Case, Brownlows
adpart, lisa ad 01

8. Tythes shall not
be paid of the income
of land, that is
held by the owner of
himself in his own
house,

house, by Hobart Chief Justice, Mich. 15. Jac. in C. B. White and Bickerstaff's Case.

9. Tythe shall not be paid for the Grass, or feeding on Fallow ground, though the same lie two or three years, according Ralch. 7 Car. in C. B.

How TYTHES are to be paid.

AL tythes are to be yielded and paid according to the value and quantum of the plats subjects

where they grow due,
 Stat. 27 H. 8. cap. 20.
 37 H. 8. cap. 7. And for
 medieval tythes (that is,
 Wood, Corn, Grain,
 Hay, fruit, and the like)
 the tenth part is to be
 set forth in the place
 where they grow, be-
 fore the owner take a-
 way his nine parts
 thereof, Stat. 2 Edw. 6.
 cap. 13.

When the Parishes
 hath set out his
 tythes, he is not bound
 to give the Parson no-
 tice of it, but the Par-
 son ought to attend
 and take notice of it
 himself; adjudged Prin.

15. Jac. C. B. Spencers
Case. No 19.

After Tythes so set forth, if the Owner of the Corn withdraw or carry away the same, he is liable to be sued in the Spiritual Court, where he shall forfeit double the value of such Tythes, besides costs and damages, 2 Edw. 5. cap. 13. But if a stranger (that is, some body besides the owner) come privately, and carry it away, the Parson may bring his Action against such stranger, but can do nothing to the

the owner, for he is not bound to watch his Tythes for him. Mic.
i Car. B R. Sileman and Chaners Case, Latch. 8.

Where Tythes are thus set out, the Person hath liberty for a convenient time to come and carry them away; and what time shall be esteemed a convenient time, must be tryed by a Jury, and if he do not take them away in such time, you may bring an Action against him, and he shall then in judgement of Law be esteemed a Trespasser, ab initio

from the beginning, Resolv. Hill 22 Jac. in B. R.
312. Mountford and Sidley's Case, Bolst. 3d part,
336, 337. See Trin. 21
Jac. B. R., Wiseman and Denhams Case, Godbolt
319. who was sued for
not accepting his tyths
of Cheese, but leaving
them in his parishioner's house to his annoy-
ance and damage.

Where

VVhere Tythes are to be recovered.

Note, That former-
ly tythes (being a mat-
ter purely spiritual) were to be sued for on-
ly in the Spiritual Courts, nor ought they indeed to be sued for any where else at this day, as is undeniably probed by Ridley in his best booke of the Civil and Ecclesiastical Law, from pag. 208. to 228. But the contrary is, and hath long time been used: For first,

F 4 they

they will sue you for the
treble value of your
predial tythes (if you
do not set them out) up-
on the Statute of 2 Ed.
6. cap. 13. to which your
best Plea will be, that
you owe them no tythes
at all, and so put them
to probe that first. Se-
condly it is their com-
mon practice to pretend
themselves Debtors to
the King, and sue in the
Exchequer by English
Bill, whereunto you
must put in your An-
swer, which if it be well
drawn, may puzzle them,
and make them let their
suit quite fall, or howe-
ver

ever it will be a long time before they can bring it on there to a Decree. Or, thirdly, They may (if they will sue you in the Spiritual Court, and there your best way is to plead either some Prescription, or else that the Tythes he demands were not in that Parish, and so get a Prohibition, for they ought not then to proceed any further there.

Note, That tythes are not alwayes to be paid in kind, that is to say, the tenth part precisely; for in most parishes

rithes there is a parti-
cular Modus, Custom,
Prescription, or man-
ner of tything, or some
certain sum of money
is to be paid in lieu
of tythes, &c. And this,
though less than a
tenth part, is good
and binding: And
therefore when ever
you are sued for tythes
in kind, if you plead a
particular custom, and
prove it, you will over-
throw the Parson or
Wicar. But note you
must prove this custom
by some persons, that
hold nothing in that
Parish where you al-
ledge

ledge the custom to be; otherwise it will not be good, for people of the same Parish will be presumed to swear for themselves.

They may sue you in the Spiritual Court for such a customary Rate, as well as for tythes in kind, but then if you deny there is any custom, or alledge that there is some other custom or manner of tything than that in the Libel, they can proceed no further, for they cannot try matter of Prescription there: And if they do proceed,

a Prohibition lies, Mich. 2. Car. B. R. Clerk and Prowse Case, Latch. 210. And if you being sued there for Tythes in kind, plead a Modus or Prescription, and if they will not allow or accept of such your Plea, a Prohibition lies.

Note, That tythes will not pass without Deed, Pasch. 19. Jac. in B. R. Bothe and Cromptons Case, Crook. 2. par. 613. Mich. 7. Jac. C. B. Pawlings Case. And therefore if you agree with your Parson and Vicar to be discharged of all your

your tythes during the time he shall have the place, or the like, be sure you have it under hand and seal for otherwise it will not be good.

Brief Instructions for
Church Wardens
and Sidemen to
observe in all Epi-
scopal or Arch-Dia-
conical Visitations.

VWhen ever
you are ci-
ted or summoned to ap-
pear at any Visitati-
ons,

ous be sent to appear
there so shall you not
be excommunicated for
a contempt.

No Bishop, Arch-
Deacon, or other Ec-
clesiastical person ought
to keep any Visitation,
unless he hath Com-
mission or Patent from
his Majesty under his
Great Seal to do it;
and that as his Ma-
jesty's Visitor only, and
in his Name and Right
alone, as appears by
26 H. 8. c. 1. 37. H. 8. c.
17. 1 Edw. 6. c. 2. 1 E-
liz. c. 1. and 8 Eliz. c. 1.
And this Commission
ought to be read pub-
lickly.

likely before the Visitation, like Judges Commissions before the Assizes, that so people may be assured they have Authority from his Majesty.

wherefore at any Visitation, the first thing you are to do, (and that in posture of Loyalty to His Majesty by virtue of the Oath of Supremacy prescribed for this very end) is to demand of the Visitor, what Patent or Commission he hath from the King under his Broad Seal, to keep a Visitation: If

ELIZ. I.

he

he have any, then demand the Register to read it openly, as the Judges Patents are read at the Assizes; but if he cannot produce such Patent or Writ not in his Majesties Name and Right, and by his Royal Authority, than you ought all presently to protest against his proceedings, as contrary to his Majesties Laws and Prerogative and so depart home without more audience.

If they tender you any Articles to present on, demand, whether those

those Articles were made by the whole Convocation, by the King's License, ratified by Parliament, and confirmed by the King himself under his Broad Seal: If they cannot make it appear to you that they were, you may bid them keep them for Waste paper: For all Articles and Canons made by their own Authority, and printed in their own Names, are directly contrary to the Statutes of 25 H. 8. cap. 19. and 21 27 H. 8. cap. 25. 32 H. 8. c. 26. 37 H. 8. cap.

cap. 17. 1 Eliz. cap. 1. 1
 & 2 Eliz. cap. 13. but most
 expressly against their
 own twelfth Canon, where
 they say, Who-
 soever shall make any
 Rules, Orders or
 Constitutions in Cau-
 ses Ecclesiastical, with-
 out the Kings Autho-
 rity, and all those that
 shall submit to the
 same, let them be ex-
 communicated ipso fa-
 cto.

If they tender you
 any Oath, see for that
 in the before-going
 Chapter, which treats
 of Oathes. Only
 note here, That the
 high

High Commission Court
was abolished abso-
lutely by the Statute
of 17 Caroli I. And
though that last men-
tioned Statute of Ca-
roli, be repealed by a
Statute made in the
thirteenth year of His
now Majesty, yet this
very last Statute En-
acts, That that Clause
of + Eliz. on which the
high Commission Court
was grounded, should
stand and continue Re-
pealed.

And further the said
Act of the thirteenth of
the now King Enacts,
That it shall not be
law:

lawful for any Ecclesiastick Judge or Officer, to render to any person whatsoever, upon Oath Ex Officio, or upon any other Oath whereby such person may be charged to confess, accuse or purge themselves of any criminal matter or thing, whereby they may become liable to any censure or punishment,

Lastly if they demand any Fees of you, demand whether any Statute or Patent from the King or his Ancestors, authorize e

enable them to take such
fees : If so, let them
introduce them, and you
will pay what they al-
low them to take. If
not, then nothing is due.

Vivat Rex, floreat Lex,
Frescat Pax, vigeat Grex.

F I N I S.